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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11	PETER VELASCO, CHRISTOPHER	)	Case No. CV 13-08080 DDP (VBKx)
12	WHITE, JACQUELINE YOUNG, and	)	
13	CHRISTOPHER LIGHT, on behalf	)	<b>ORDER RE CENTER FOR AUTO SAFETY'S</b>
14	of themselves and all others	)	<b>MOTION TO UNSEAL AND MOTION TO</b>
15	similarly situated,	)	<b>INTERVENE</b>
16		)	
17	Plaintiffs,	)	[Dkt. Nos. 81, 82]
18		)	
19	v.	)	
20		)	
21	CHRYSLER GROUP LLC ,	)	
22		)	
23	Defendant.	)	
24		)	

Presently before the Court are motions by nonparty Center for Auto Safety ("CAS") to intervene in this matter and to unseal documents related to Plaintiffs' prior motion for a preliminary injunction, (Dkt. No. 49), which was denied on October 27, 2014. (Dkt. No. 88.) Having considered the parties' submissions and oral arguments, the Court adopts the following order.

**I. BACKGROUND**

This case is a putative class action regarding the alleged failure of an electronic control unit, known as the "TIPM-7," installed in a number of late-model Chrysler vehicles. On March

1 26, 2014, Magistrate Judge Kenton issued a protective order  
2 allowing any party to designate a document in the case  
3 "Confidential," which would protect the document from public view.  
4 (Dkt. No. 35.) On September 18, 2014, Plaintiffs moved for a  
5 preliminary injunction authorizing them to send potential class  
6 members a preliminary notice warning of the potential for dangerous  
7 component failures in Chryslers equipped with the TIPM-7. (Dkt.  
8 No. 49.) Plaintiffs applied to submit certain documents related to  
9 the motion "provisionally under seal," because the parties were  
10 still attempting to reach settlement. (Dkt. No. 51.) Plaintiffs  
11 nonetheless expressed the opinion that the documents should be in  
12 the public record, and they requested the right to subject the  
13 documents to "later motion practice" to unseal "should the parties  
14 be unable to resolve their disagreement." (Id.)

15 Defendant similarly filed an application to submit documents  
16 in opposition to the motion under seal, primarily because the  
17 documents constituted confidential business information. (Dkt. No.  
18 63.) The Court granted both parties leave to file under seal. The  
19 documents filed under seal were as follows:

- 20 • Unredacted copies of the Motion and Memorandum in Support  
21 of the Motion, the proposed Order, the Opposition, and  
22 the Reply;
- 23 • Unredacted declaration of David Stein and Exhibits A-U  
24 attached thereto;
- 25 • Unredacted declaration of Rachel Naor and Exhibit P  
26 attached thereto;
- 27 • Unredacted declaration of James Bielenda and Exhibits A-D  
28 attached thereto;

- 1 • Exhibits B, C, E, F, and Q attached to the declaration of
- 2 Dylan Hughes;
- 3 • The parties' various applications and proposed orders
- 4 regarding the sealing of the above documents.

5 On October 27, 2014 the Court heard oral arguments and denied the  
6 motion for preliminary injunction. (Dkt. No. 88.)

7 On October 23, 2014, nonparty CAS filed these motions to  
8 intervene in the case and to unseal the sealed portions of the  
9 record on the motion for preliminary injunction. (Dkt. Nos. 81,  
10 82.) Defendant opposes the motions. (Dkt. Nos. 95, 96.)

## 11 **II. LEGAL STANDARD**

12 "Nonparties seeking access to a judicial record in a civil  
13 case may do so by seeking permissive intervention under Rule 24(b)  
14 . . . ." San Jose Mercury News, Inc. v. U.S. Dist. Court--N. Dist.  
15 (San Jose), 187 F.3d 1096, 1100 (9th Cir. 1999). Rule 24(b)  
16 ordinarily requires the intervenor to show "(1) an independent  
17 ground for jurisdiction; (2) a timely motion; and (3) a common  
18 question of law and fact between the movant's claim or defense and  
19 the main action." Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d  
20 470, 473 (9th Cir. 1992). However, where a nonparty proposes to  
21 intervene solely for the limited purpose of ensuring public access  
22 to court documents, no independent ground for jurisdiction is  
23 required. Id.

24 Ordinarily, there is a strong presumption that court records  
25 should be open to public inspection. Nixon v. Warner Commc'ns,  
26 Inc., 435 U.S. 589, 597 (1978). However, the right is not  
27 absolute, and public access may be denied, for example, where the  
28 records involved contain sensitive business information, the

1 release of which "might harm a litigant's competitive standing."  
2 Id. at 598. "[M]ost judicial records may be sealed only if the  
3 court finds 'compelling reasons.' However, a less exacting 'good  
4 cause' standard applies to . . . previously sealed discovery  
5 attached to a nondispositive motion.'" Oliner v. Kontrabecki, 745  
6 F.3d 1024, 1025 (9th Cir. 2014) (citations omitted) (internal  
7 quotation marks omitted).

### 8 **III. ANALYSIS**

#### 9 **A. Motion to Intervene**

10 CAS argues that it has satisfied the requirements for  
11 permissive intervention under Rule 24(b), because it has intervened  
12 in a timely manner and its attempt to unseal documents in the case  
13 clearly shares "common questions of law and fact" with the main  
14 action. Defendant does not dispute that CAS meets these  
15 requirements, but argues that the Court should nonetheless deny the  
16 motion to intervene because the intervention could prejudice the  
17 adjudication of its rights, CAS's interests are adequately  
18 represented by the original parties, and it does not serve the  
19 principle of judicial economy to allow CAS to intervene. (Opp'n to  
20 Mot. Intervene at 2-8.)

21 On the merits, the Court finds it likely that CAS has the  
22 better argument. Nonetheless, the proposed intervention is for the  
23 sole purpose of unsealing the documents in question, and the Motion  
24 to Unseal is denied, Part III.B. infra. There is no other reason  
25 for CAS to be a party to this action. The Motion to Intervene is  
26 therefore denied without prejudice.

#### 27 **B. Motion to Unseal**

##### 28 **1. Legal Standard**

1 The public is presumptively entitled to review court records.  
2 Ordinarily, a party must show "compelling reasons" to seal a court  
3 document. Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172,  
4 1178 (9th Cir. 2006). However, the party need only show "good  
5 cause" to keep sealed records attached to a "non-dispositive"  
6 motion. Id. at 1180. Defendant argues that the motion for  
7 preliminary injunction was such a "non-dispositive" motion. CAS  
8 argues, on the other hand, that a motion for preliminary injunction  
9 can be "dispositive" if "the documents at issue are, in fact,  
10 relevant to the merits of a case." (Reply ISO Mot. Unseal at 5:12-  
11 14.) Here, CAS argues, the documents sought are relevant to the  
12 merits, the preliminary injunction motion should be considered  
13 "dispositive," and Defendant should be required to show "compelling  
14 reasons" why the documents should remain sealed.

15 There is little clarity as to what, exactly, constitutes a  
16 "dispositive" motion. "Aside from noting that summary judgment  
17 motions are dispositive, and that discovery sanctions motions are  
18 non-dispositive, the distinction has not been articulated by the  
19 Ninth Circuit." Dish Network L.L.C. v. Sonicview USA, Inc., No.  
20 09-CV-1553 L (NLS), 2009 WL 2224596, at \*6 (S.D. Cal. July 23,  
21 2009) (citations omitted). Plaintiff cites a recent District of  
22 Idaho case, Melaleuca Inc. v. Bartholomew, for the proposition that  
23 a motion for preliminary injunction is a dispositive motion,  
24 because "[i]njunctive relief proceedings involve significant  
25 discussion of the merits of the case." No. 4:12-CV-00216-BLW, 2012  
26 WL 5931690, at \*2 (D. Idaho Nov. 27, 2012) (internal quotation mark  
27 omitted). See also Selling Source, LLC v. Red River Ventures, LLC,  
28 2011 WL 1630338, \*5 (D.Nev.2011); Dish Network, 2009 WL 2224596, at

1 \*6. The Court does not find this argument persuasive, for two  
2 reasons.

3 First, it ignores the plain meaning of the word "dispositive":  
4 motions for preliminary injunction do not actually create any sort  
5 of "disposition," in the sense of a *final* determination on some  
6 issue.<sup>1</sup> The Northern District of California rejected arguments  
7 almost identical to those made by CAS here, precisely because the  
8 preliminary injunction did not offer a final resolution on the  
9 merits:

10 According to the media entities . . . a preliminary injunction  
11 is dispositive because such a motion "inevitably involve[s]  
12 consideration of the merits of a dispute." *But this argument*  
13 *misconstrues the discussion in Kamakana, which emphasizes the*  
14 *"resolution of a dispute on the merits," not the mere*  
15 *"consideration" of the merits.* The media entities similarly  
16 place undue emphasis on the Kamakana court's characterization  
17 of non-dispositive motions (that such motions "are often  
18 unrelated, or only tangentially related, to the underlying  
19 cause of action.") . . . .

20 In view of the Ninth Circuit's reasoning, the court concludes  
21 that a preliminary injunction motion is not dispositive  
22 because, unlike a motion for summary adjudication, it neither  
23  
24

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25 <sup>1</sup>Black's, for example, defines "disposition" as "[a] final  
26 settlement or determination" and "dispositive" as "bringing about a  
27 final determination." Black's Law Dictionary 505 (8th ed.2004).  
28 See also In re Seracare Life Sciences, Inc., No. 05-CV-2335-H  
(CAB), 2007 WL 935583, at \*16 (S.D. Cal. Mar. 19, 2007) ("[B]ecause  
the case against KPMG will be over if the Court grants its motion,  
KMPG's motion is dispositive.").

1 resolves a case on the merits nor serves as a substitute for  
2 trial.

3 In re Nat'l Sec. Agency Telecommunications Records Litig., No. MDL  
4 06-1791 VRW, 2007 WL 549854, at \*3-4 (N.D. Cal. Feb. 20, 2007)  
5 (emphasis added). See also Reilly v. MediaNews Grp. Inc., No.  
6 C06-04332 SI, 2007 WL 196682 (N.D. Cal. Jan. 24, 2007) (treating  
7 motion for TRO as non-dispositive).

8 Second, even if the Melaleuca, Selling Source, and Dish  
9 Network courts are correct that a motion for a preliminary  
10 injunction can be a dispositive motion, it does not follow that  
11 every motion for an injunction will be dispositive. Likely that  
12 determination should depend on the nature of the relief requested.

13 For example, in Dish Network, the district court granted  
14 plaintiff satellite television companies' ex parte motion for a  
15 temporary restraining order and a writ of civil seizure against  
16 manufacturers of equipment allowing consumers to "intercept and  
17 steal" the plaintiffs' signals. Dish Network, 2009 WL 2224596, at  
18 \*1. The motion asked the court to enjoin a defendant from  
19 continuing a disputed business practice - a temporary version of  
20 the relief requested in the underlying lawsuit. Necessarily, in  
21 order to grant the motion, the court had to peek into the merits of  
22 the case, in order to determine that there was sufficient evidence  
23 of the piracy alleged in the underlying case. Moreover, the TRO  
24 covered no other extraneous matters; thus, the court's decision on  
25 the TRO was limited to, and fundamentally dependent on, an  
26 examination of the merits of the case.

27 In this case, however, the motion was not a motion to  
28 temporarily grant the relief ultimately sought in underlying suit;

1 rather, it was a request to send notice of potential problems with  
2 Defendant's vehicles to thousands of purchasers. Determining  
3 whether to send such notice necessarily involved consideration of  
4 the widest possible range of vehicles, some of which may ultimately  
5 be weeded out by the parties in the course of litigation. Thus, it  
6 involved evidence and issues which may ultimately not factor into  
7 the underlying case. Moreover, in Dish Network the plaintiff  
8 requested a writ of seizure, which was necessary to prevent the  
9 destruction of evidence crucial to the main case. Here, however,  
10 the prosecution of the main case did not turn on the outcome of the  
11 motion; the case could easily have continued without the motion  
12 ever being filed at all. Thus, unlike the motion in Dish Network,  
13 the motion in this case was not even intended to aid in the  
14 ultimate disposition of the case.

15 Because the motion for preliminary injunction here was not a  
16 resolution of any issue on the merits, was broader and shallower in  
17 scope than a true consideration of the merits, and was not  
18 necessary to the resolution of the case, the Court finds that the  
19 motion was not dispositive.

20 Because the motion was a non-dispositive motion, and the  
21 exhibits attached to it were sealed under the magistrate's  
22 protective order, the Court conducts its analysis under the good  
23 cause standard, not the compelling reasons standard.

## 24 **2. Good Cause to Keep Documents Sealed**

25 The Court finds that in this case there is good cause to keep  
26 the documents sealed at this time, for at least three reasons.  
27 First, a number of the documents seem to include Defendant's  
28 technical information, which could comprise trade secrets. Of

1 course, technical information is only a trade secret if it provides  
2 competitors with some useful advantage.<sup>2</sup> Techniques and processes  
3 which are obvious to anyone in the industry do not count as trade  
4 secrets.<sup>3</sup>

5 In a declaration attached to the Opposition, James Bielenda,  
6 Chrysler's Manager of Product Investigations, explains that some of  
7 the documents could provide competitors with information about  
8 Defendant's manufacturing and testing processes, specifications,  
9 and standards, as well as Defendant's "operational capacity."  
10 (Bielenda Decl., ¶¶ 14-17.) Such information could provide  
11 competitors with specific guidance as to how to manufacture their  
12 own products more efficiently, without having to engage in the  
13 expensive research and development that Defendant has already done.  
14 The disclosure of such specific technical information, in other  
15 words, would enable competitors to "leapfrog" Defendant's hard  
16 engineering work and unfairly reap the competitive rewards.

17 Under this rationale, documents which contain specific  
18 technical information about Defendant's manufacturing and testing  
19 processes, or product standards and tolerances, are likely to be  
20 trade secrets. As far as the Court can determine at present, given  
21 limited briefing, the group of documents containing such

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22  
23 <sup>2</sup>"The economic value of that property right [in a trade  
24 secret] lies in the competitive advantage over others that Monsanto  
25 enjoys by virtue of its exclusive access to the data, and  
disclosure or use by others of the data would destroy that  
competitive edge." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1012  
(1984).

26 <sup>3</sup>Self Directed Placement Corp. v. Control Data Corp., 908 F.2d  
27 462, 465 (9th Cir. 1990) (affirming a district court holding that  
28 "[i]t would be absurd to permit [the [plaintiff] to appropriate as  
his own 'secrets' common pedagogical and job search techniques  
which would be used in any job placement course.").

1 information would likely encompass at least the following: Exhibits  
2 A-C, E, and J-P (Dkt. No. 57); the Bielenda Decl. (Dkt. No. 65) and  
3 Exhibit A thereto; and Exhibits E and F to Hughes Decl. (Dkt. No.  
4 74).

5 Other documents currently under seal seem to have less claim  
6 to trade secret status; the bulk of the remaining documents are  
7 internal communications among Defendant's employees, or between its  
8 employees and outside contractors, that do not appear to contain  
9 significant technical information. A few others are letters  
10 between counsel. Nonetheless, the Court declines to unseal them at  
11 this time.

12 Important policy considerations favor not unsealing the  
13 documents. As Defendant points out, the record at this time is  
14 incomplete. While bringing to light and publicly examining product  
15 failures, and manufacturers' responsibility for such failures, is  
16 one of the key functions of this kind of litigation, it is also  
17 important that the Court not release information that could become  
18 "a vehicle for improper purposes." Nixon v. Warner Commc'ns, Inc.,  
19 435 U.S. 589, 598 (1978). One such improper purpose would be to  
20 "promote public scandal." Id. Speaking generally, with absolutely  
21 no reference to CAS itself, there is some danger that the wide  
22 publication of selected, out-of-context materials, in a matter that  
23 is only in the early stages of litigation, could unnecessarily harm  
24 Defendant and present an unfair picture of the alleged facts to the  
25 public.<sup>4</sup>

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26  
27 <sup>4</sup>Of course, "[t]he mere fact that the production of records  
28 may lead to a litigant's embarrassment, incrimination, or exposure  
to further litigation will not, without more, compel the court to  
(continued...)

1 This concern is bolstered by the fact that, even with complete  
2 access to the sealed documents, the Court could not come to any  
3 solid conclusion as to what they might prove - which is why the  
4 Court denied the motion for preliminary injunction in the first  
5 place. (Dkt. No. 88.) The disclosure of early, incomplete  
6 discovery documents that the Court itself found inconclusive has  
7 great potential to mislead the public.

8 This is particularly the case when it comes to the disclosure  
9 of small snippets of informal corporate communications, which may  
10 frequently be incomplete, inaccurate, jocular, or filled with an  
11 insider's shorthand or jargon. An offhand remark in an email can  
12 easily become the "gotcha" quote in headlines and press releases,  
13 and Defendant would be forced to litigate the case in court and  
14 litigate in the press. Moreover, as investigations of alleged  
15 TIPM-7 failures are ongoing both inside and outside the company,  
16 the Court is leery of creating an environment that would chill free  
17 and open communication among Defendant's engineers, or incentivize  
18 the use of closed-door meetings that leave no paper trail.

19 The motion to unseal is therefore denied, except for the  
20 documents described in Part III.B.4., infra.

21 This is not to say that these documents may never be unsealed,  
22 or that identical information will not become available to the  
23 public in the course of the litigation. When the Court is called  
24 upon to make *dispositive* rulings, the "compelling reasons" standard

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25  
26 <sup>4</sup>(...continued)  
27 seal its records." Kamakana v. City & Cnty. of Honolulu, 447 F.3d  
28 1172, 1179 (9th Cir. 2006). Certainly, in the event that the full  
adjudication of this case reveals facts that are embarrassing to  
Defendant, that will provide no reason to hide them from public  
view.

1 will apply, and Defendant will be granted much less deference in  
2 protecting its technical information and its internal  
3 communications. Because the record will be more complete, there  
4 will be less concern that disclosure could give a false impression  
5 or unnecessarily promote public scandal. The Court may also  
6 subject Defendant's alleged trade secrets to significantly more  
7 scrutiny at that point. The Court emphasizes that this order is  
8 limited to the narrow question posed - whether the sealed documents  
9 documents submitted in support of arguments about the motion for  
10 preliminary injunction should be unsealed at this time.

11 **3. Briefs and Declarations**

12 In its Reply, CAS argues that "[b]ecause the parties' briefing  
13 and declarations on the motion for preliminary injunction are not  
14 even arguably discovery documents, they cannot possibly fall under  
15 the exception to the presumption of public access for sealed  
16 discovery documents attached to non-dispositive motions. Therefore  
17 . . . the compelling reasons standard indisputably applies to these  
18 records." (Reply ISO Mot. Unseal at 6.) This argument relies on a  
19 highly literal reading of the rule that completely negates its  
20 intended effect. There can be no reason to attach a discovery  
21 document to a motion or brief except in order to make reference to  
22 its contents, and it would be nonsensical to carefully exempt the  
23 discovery document from disclosure, only to allow full disclosure  
24 of citations to it in a briefing paper. The same standard applies  
25 to the discovery documents and to the references to them in the  
26 briefs and declarations. The redacted portions of the briefs and  
27 declarations remain under seal.

28 ///

1 **4. Disclosures Agreed to by Defendant**

2 Defendant has no objection to the unsealing of: Naor Decl. &  
3 Ex. P thereto; Stein Decl., Exs. H, Q; Hughes Decl., Ex. Q. (Opp'n  
4 to Mot. Unseal at 1 n.1.). These documents will therefore be  
5 unsealed.

6 **IV. CONCLUSION**

7 CAS's Motion to Intervene and Motion to Unseal are DENIED.  
8 However, the denial is without prejudice, and CAS is free to move  
9 to intervene again in the event that future motions also present  
10 questions of public access to court records. Additionally, as all  
11 parties agree to the unsealing of certain documents, the Court  
12 hereby ORDER the Plaintiffs to file a single new document entitled  
13 "DOCUMENTS PREVIOUSLY FILED, UNSEALED AS ORDERED BY THE COURT"  
14 comprised of one unredacted copy of each of the following: Naor  
15 Decl. (Dkt. No. 55) & Ex. P thereto; Exs. H, Q to Stein Decl. (Dkt.  
16 No. 57); Ex. Q. to Hughes Decl. (Dkt. No. 74).

17  
18 IT IS SO ORDERED

19 Dated: December 30, 2014



DEAN D. PREGERSON  
United States District Judge